



Advisory Opinion 09-009

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2008). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On March 5, 2009, the Information Policy Analysis Division (IPAD) received a letter dated same, from Dwight Luhmann, attorney for the City of Preston. In his letter, Mr. Luhmann asked the Commissioner to issue an advisory opinion regarding the classification of certain data the City maintains. IPAD asked for additional information which Mr. Luhmann provided on March 9, 2009.

A summary of the facts as provided by Mr. Luhmann is as follows. In a letter dated October 23, 2008, the City received a request for the following: "All documents containing the names, current addresses and/or partners of Root River LLC, Preston, Minnesota."

In a letter dated December 16, 2008, the city administrator responded: "During a search of City records, I discovered one document, a business plan for Root River LLC, that lists the owners of the Root River LLC. I cannot, however, release this document as it is classified as private or non-public by MN Statute 13.591."

In a letter dated December 29, 2008, the data requestor wrote again: "My request for a list of owners is different from a business plan and is not one of the enumerated exceptions to the public data disclosure act."

In his opinion request Mr. Luhmann wrote regarding the October 23, 2008, request:

...The only document found as a result of that search was a business plan...Root River, LLC had applied to the Preston Economic Development Authority for tax increment financing and did in fact receive that assistance. The response indicated that the business plan had been discovered, but was not being provided because a determination had been made that it was private or nonpublic data pursuant to M.S. 13.591 Subdivisions 1 and 2.

Issue:

Based on Mr. Luhmann's opinion request, the Commissioner agreed to address the following issue:

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of the following data: the names of owners of a company that are contained in a business plan the company submitted to the City of Preston as part of a request for financial assistance?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, all government data are public unless otherwise classified. (Section 13.03, subdivision 1.)

Minnesota Statutes, section 13.591, subdivision 1, classifies certain data submitted to a government entity by a business that requests financial assistance or a benefit financed by public funds. This provision states that the following data are private or nonpublic: financial information about the business, including credit reports; financial statements; net worth calculations; *business plans*; income and expense projections; balance sheets; customer lists; income tax returns; and design, market, and feasibility studies not paid for with public funds.

Subdivision 2 of section 13.591, states that when a government entity provides public financial assistance or a benefit to a business, the data types listed in subdivision 1 become public except the following data remain not public: *business plans*; income and expense projections not related to the financial assistance provided; customer lists; income tax returns; and design, market, and feasibility studies not paid for with public funds.

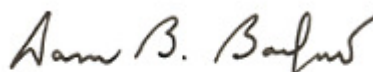
Root River LLC requested and received a benefit/financial assistance from the City. Although Mr. Luhmann did not specifically so state, the Commissioner assumes Root River submitted its business plan as part of requesting the benefit/financial assistance. Pursuant to section 13.591, subdivision 2, the business plan (and the data contained therein) Root River submitted to the City is not public.

Opinion:

Based on the facts and information provided, my opinion on the issue that Mr. Luhmann raised is as follows:

The business plan, and the data contained therein, that a particular business submitted to the City of Preston as part of a request for a benefit/financial assistance are not public data pursuant to Minnesota Statutes, section 13.591.

Signed:



Dana B. Badgerow
Commissioner

Dated:

April 17, 2009